

Congress of the United States
Washington, DC 20515

June 12, 2017

Mr. Charles Smith
Executive Commissioner
Texas Health and Human Services Commission
Brown-Heatly Building
4900 North Lamar
Austin, Texas 78751

Dear Executive Commissioner Smith,

As Members of Congress representing millions of people in Texas, we urge you not to move forward with the Medicaid Section 1115 Demonstration family planning waiver (herein referred to as the Waiver) as proposed. The proposal seeks federal funding for our state's poor performing women's health program, Healthy Texas Women (HTW), that blocks low-income patients from accessing care at qualified family planning providers like Planned Parenthood. In addition to continuing to exclude family planning providers that "perform or promote" abortion services, the waiver also seeks to impose parental consent on birth control access by requiring a teen ages 15-17 to have a parent or legal guardian apply for her coverage and excludes coverage of emergency contraception. Texans expect and deserve public health programs that meet their health care needs. Without modification, the HTW Program will continue to fail them.

Congress designed Section 1115 of the Social Security Act to provide states flexibility to launch new, innovative pilot programs to improve their Medicaid programs. This includes expanding family planning coverage to individuals who would otherwise go without care. However, federal law is clear that section 1115 waivers are not to be used to continue programs that have already proven to be ineffective or harmful.

Texas forfeited its Medicaid family planning program solely because it wanted to operate a program that would block low-income women from receiving essential family planning, such as birth control, STI services, and well-woman exams, from qualified providers, including Planned Parenthood. As a result, since the inception of the state-funded HTW Program, women's health and well-being in the state have suffered. In comparison to its previous Medicaid family planning waiver, 30,000 fewer women¹ have received care, 35 percent fewer women² have received the most effective methods of birth control, and 27 percent more births³ have occurred among women who previously had injectable contraception. Moreover, pregnancy-related deaths in Texas doubled during the time period that largely coincides with Texas cutting Planned Parenthood from its program, further exacerbating already stark health disparities in maternal

¹ Texas Health and Human Services Foundation. "Texas Women's Health Program: Savings and Performance Reporting." January 2015. <https://hhs.texas.gov/sites/hhs/files/tx-womens-health-program-rider-44-report.pdf>

² Amanda J. Stevenson, M.A., Imelda M. Flores-Vazquez, Ph.D., Richard L. Allgeyer, Ph.D., Pete Schenkkan, J.D., and Joseph E. Potter, Ph.D. "Effect of Removal of Planned Parenthood from the Texas Women's Health Program." New England Journal of Medicine. March 3, 2016. <http://www.nejm.org/doi/full/10.1056/NEJMsa1511902#t=abstract>

³ Ibid.

mortality among Black women⁴. Texas ranks 50th in meeting women's health, with only 16 percent of publicly-funded women's health services needs met.⁵ This is truly a shame, and what's worse, it is entirely preventable.

Moreover, recognizing the intimate nature and vital importance of family planning services and supplies, Congress created a federal provision that entitles Medicaid enrollees their free choice of provider for family planning care.⁶ This provision ensures that enrollees can obtain essential preventive care, such as birth control and lifesaving cancer screenings, from any Medicaid-participating provider that is competent to provide family planning care. Operating a program that cuts off patient access to qualified family planning providers solely on the basis of ideology clearly contravenes Congressional intent to safeguard women's access to family planning care from trusted community providers.

We are also concerned that HHSC is seeking to impose additional barriers to family planning care by imposing parental consent for teens ages 15-17 and refusing to cover emergency contraception. Congress explicitly designed the Medicaid program to ensure access to family planning services and supplies for all individuals of reproductive age, including teens.⁷ In addition, research has shown that youth will forgo necessary and critical care, like testing and treatment for STIs, if they fear parental repercussions.⁸ Requiring teens to obtain parental consent to enroll in the program and receive care provided through the program will only result in individuals not accessing the care they need to take care of their health and well-being.

The proposal not to cover emergency contraception is disturbing given that emergency contraception is particularly needed to prevent unintended pregnancy after an incident of birth control failure or sexual assault. Federal policy encourages state Medicaid programs to cover the full range of FDA-approved contraceptive methods to ensure that individuals have access to the method that is best for them.⁹ All individuals deserve the dignity of selecting their contraceptive method. Only when an individual is able to access the contraceptive product that is best for them will they be able to meaningfully decide if and when to have a child or expand their family.

We are extremely troubled that the State of Texas is seeking to continue the HTW Program even after HHSC has itself noted that it is unable to meet the current needs and demands of women and teens across the state. Moreover, we are concerned that the State proposes to implement a program that clearly contravenes Congressional intent. If HHSC wants to implement a Medicaid family planning program, it should ensure that the program meaningfully addresses the important

⁴ Marian F. MacDorman, PhD, Eugene Declercq, PhD, Howard Cabral, PhD, and Christine Morton, PhD. "Recent Increases in the U.S. Maternal Mortality Rate; Disentangling Trends From Measurement Issues." *Obstetrics & Gynecology*. September 2016. http://d279m997dpfwgl.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf

⁵ United Health Foundation. "America's Health Rankings: Health of Women and Children Report." 2016. <http://assets.americashealthrankings.org/app/uploads/hwc-complete-report.pdf>.

⁶ 42 U.S.C. § 1396a(a)(23)(B).

⁷ 42 U.S.C. § 1396d(a)(4)(C).

⁸ Abigail English et. al. "Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies." Guttmacher Institute. July 2012. https://www.guttmacher.org/sites/default/files/report_pdf/confidentiality-review.pdf

⁹ Centers for Medicaid and CHIP Services. "Letter to State Health Officials #16-008" June 14, 2016. <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16008.pdf>.

issues of unintended pregnancy, maternal mortality, and teen pregnancy in line with federal law. We urge HHSC to amend the waiver to ensure that all eligible women are able to confidentially access the full range of contraceptive methods (including emergency contraception) from all qualified providers, including Planned Parenthood. Only then could we truly say this program seeks to improve the health of the women of our state.

Sincerely,



Gene Green
Member of Congress



Lloyd Doggett
Member of Congress



Beto O'Rourke
Member of Congress



Filemon Vela
Member of Congress



Joaquin Castro
Member of Congress



Sheila Jackson Lee
Member of Congress



Eddie Bernice Johnson
Member of Congress



Marc Veasey
Member of Congress